

# MY FIVE MINUTES IN A WITNESS PROTECTION PROGRAM

by  
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## Abstract

My experience with the civil trial of the Estate of Edward Low vs. the Ohio Historical Society, Franklin County Court of Common Pleas, Case No. 10CVH-06-8356, Judge Richard A. Frye presiding, is described.

## Introduction

In 2009 the late Ed Low contacted me as a person who had worked at the Ohio Historical Society and might know something about the Archaeology Department and be of help with his attempt to regain the engraved Adena tablet now bearing his name and, according to him, loaned rather than gifted or donated to OHS. OHS has steadfastly maintained that Low donated the tablet, based on a September 2, 1971, telephone call from Raymond S. Baby to Low. The only known version of this call is Low's, who just as steadfastly maintained that Baby asked him to sell the tablet to OHS, an idea Low rejected, as his paramount wish was to see it on display in West Virginia, where he had found it in 1942. Baby left no account of this telephone conversation but he allegedly indicated to his assistant, Martha Otto that Low had donated the tablet to OHS on September 2nd, and Otto, with remarkable alacrity (the same day) accessioned the tablet. The only other prima facie evidence is a hand-drawn map that Low made on his only previous visit to the Archaeology Department (May 1971), drawn at the Department's request, to show where he had found the tablet. On this sketch map, Martha Otto wrote Low's address and then, presumably on September 2nd, added that date and the word "gift." She has subsequently stated that this must have been because Baby told her to do so based upon his telephone conversation with Low earlier that day. As such, this testimony would be considered hearsay by most people, since there was no direct record of Baby's portion of the telephone conversation; however, it was specifically allowed as evidence in Judge Frye's court.

On the advice of Baby, the Board of Trustees made Low an honorary lifetime member of the Society, in recognition of what had now become his "donation"-i.e., the Low Tablet and an associated unengraved Adena tablet. Remarkably, while there were two prominent Ohio attorneys on the OHS Board of Trustees at the time of Low's alleged donation (Fred Milligan, Sr., father of OHS's present legal counsel, and my friend William Vodrey, Jr.), no one had edu-

cated the Archaeology Department staff as to the advisability of having a written agreement ("donor form") in such instances. Both attorneys/trustees approved making Low an honorary life member of OHS (an honor Low never coveted), simply on the say-so of curator Raymond S. Baby.

Additional physical evidence cited by the defense (OHS) in the Low trial are two letters sent to Low announcing this signal reward, but it remains unclear whether he received both of them. (A similar problem with the question of whether a lender actually received notice of changes in the status of their loaned artifacts arose with the murky history of the Marie Sunkle Cache.) Incredibly, the Ohio Code has since been revised so that this point is moot – if you don't receive our letter, too bad; the artifacts become ours after a short period of time. Low did utilize this honorary membership to a limited extent, not recognizing that the Society considered it a *quid pro quo* for ownership of the Adena tablets. Low in fact remembered laughing at whichever of the two letters he received, as he knew that any agreement he had made was a loan, not a gift.

## My Small Part in the Low Controversy

When I read Alan Johnson's article on Ed Low's problem (Columbus *Dispatch*, Dec. 7, 2009), I thought that Low ought to know there had been previous instances of people who had loaned artifacts to the Ohio Historical Society thinking they could get them back if and when they chose to. When Low contacted me, I told him of various cases familiar to me in which artifacts had been sold or discarded, had gone missing or were still in the "care" of OHS but which would not be returned to their original owner.

For example, the original coffin of Edwin Coppock, an anti-slavery martyr executed with John Brown, was last seen being hauled off to an Antioch College fraternity house, picked out of the material discarded when OHS moved from the OSU campus to its present location. This Anti-Slavery relic had been obtained by OHS in the 1920s and when the Salem Historical Society many years later tried to borrow it for exhibition, it "could not be found."

When visiting a mound excavation conducted by Ernest Sutton, of Coolville, Ohio, and mentioning that I was going to visit OHS, Sutton personally requested me to ask Baby when he would return an Adena clay pot that Sutton had loaned to him for study when Baby had visited one

of his mound excavations. When asked, Baby got angry and told me he didn't know what I was talking about, had never seen or heard of such an Adena pot and had never had it. Years later the family tried to reclaim Sutton's artifacts, which had been on display at Campus Martius but were moved to Columbus without his permission: all they obtained was a letter from Fred J. Milligan, OHS's legal counsel, stating that the material "could not be found."

None of this and similar information provided in my deposition, was admitted into courtroom testimony at the Low trial, barred as being based on hearsay, whether it was or not. Judge Frye, in fact, exhibited a remarkably protective attitude toward the sole defense witness, Martha Otto.

One piece of evidence involving me that the Low attorney had thought important and direct (i.e., not based on hearsay) involved a brief conversation I had with Martha Otto in 1980. I was then a reference librarian at OHS but had some interaction with the Archaeology Department due to my work in contract archaeology and other archaeological research, and I could say (as I was allowed to testify) that I knew Martha Otto. The immediate cause of the exchange was the reprinting of her 1975 *Ohio Archaeologist* article on Adena tablets in OHS's *Echoes* newsletter, an article in which she praised Ed Low for bringing the tablet to the attention of the Museum and mentioned that it was "currently" on display in the Museum; that is, "currently" in 1975 and still "currently" in 1980.

Shortly after the article re-appeared in *Echoes*, I was on reference duty in the OHS Library when Martha happened to walk through the reading room. I took the opportunity to call to her, "Martha, I see you've found another Adena tablet." She stopped briefly, perhaps wondering how to take the obviously facetious remark, since it technically was inaccurate – she had not found any Adena tablet herself, let alone "another" one. She simply gave a slight smile, and nodded, apparently not inclined to stop to chat. As she continued on her way, I asked, "Are you going to get them to give it to the Society?" This was also facetious, because her article did not indicate the tablet had been donated and because I couldn't believe that anyone would simply donate an artifact with such potential informational and monetary value. Martha's response was on the order of "We hope so. We're working on it." And with that she was out the doorway. She definitely did not say that the tablet had been donated to OHS

nine years earlier or even that OHS now owned it. I did not think anything of our brief exchange at the time, but for years afterward, if I had thought about it I would have said that as far as I knew the tablet was still on loan, absent any evidence to the contrary.

Eventually, learning of Ed Low's difficulty getting his tablet returned to him, I went through what by my standards was a lengthy deposition, in 2009. I did not recall this brief exchange with Martha Otto until much later when it looked like the matter would finally come to a trial. Replaying in my mind the novel experience of having been deposed, what I had said, and the questions I had been asked, it suddenly occurred to me that to the best of my recollection no one had asked me directly if I had ever discussed the Low Tablet with Baby or with Martha. This was perhaps understandable since the focus was on 1971, the period of the alleged donation, when I was not even in Columbus. But when this thought occurred to me, I suddenly recalled the incident in the reading room with Martha. It was a proverbial lightbulb or even Proustian moment.

Parenthetically, there was never occasion or reason to mention the Low Tablet to Baby, for by 1977, when I began working at OHS, he was, not to put too fine a point on it, on his last legs. What was delicately referred to as his "health" had taken its toll, and then in 1977 there was the remarkable incident at Seip Mound. Baby subsequently kept a low profile and was seldom seen during those last years; he was forced to retire in 1979 and passed away in 1982.

Martha Otto, on the other hand, flourished and happily is still with us. As witness for the defense in the Low case, she was present when I started to testify about our 1980 exchange and was fully capable (unlike the late Baby and Low) of testifying about it, which makes it all the more perplexing that Judge Frye disallowed my proposed remarks as hearsay.

### The Verdict

The eight person jury was deadlocked

four to four for much of the last day of the trial, when judge Frye put increased pressure on them to reach a decision. Two members switched their vote to the defense, and that was pretty much the end of it. Afterwards there was a brief interlude when attorneys and jurors mingled. Witnesses were not present, but I was told later that there was some curiosity as to just what it was I would have said, had the judge allowed my testimony and, when told, several jurors indicated that the testimony would have changed their mind about how they voted. Cold comfort. One juror also reported that at one point another juror had looked at her watch and said she had something important to do the next day, apparently sufficient reason for a rush to judgment.

### Conclusion

One online Dispatch reader commented on reporter John Fuddy's account (February 24th) of the trial, that "It's too bad the 1971 'gentlemen's agreement' is not being honored. Lesson to be learned – Shake hands but get it in writing." To which I replied that "Unfortunately, a gentlemen's agreement requires more than one gentleman, and Ed Low was the only decent person involved in this sad and even tragic affair."

In my brief association with him, there was never any question that Ed Low was an honest man and a gentleman. I have heard Raymond S. Baby described as a lot of things, but not as either of these. In fact many of us have heard the same stories, all of which are second hand at best and therefore, hearsay; but sifting through my memories of the many unflattering things I've heard of him, there is one signal event, besides the Ernest Sutton dispute, to which I can provide unequivocal evidence. The late Olaf H. Prufer despised Baby for many reasons but most personally for having to make him co-author of *Paleo-Indians of Ohio* in return for being allowed to study the material in the OHS collections. When Prufer and I were researching the 1948 dismissal of OHS archaeologist Richard Morgan, Baby's predecessor, Prufer sent

me a copy of a letter of inquiry he wrote to Professor John F. Bennett, September 6, 1991). In passing, Prufer wrote:

"In regard to the late Ray Baby:

I have known this fellow extremely well; in fact he succeeded in forcing himself on me as co-author of one of my books (Prufer and Baby, *Palaeo-Indians of Ohio*, 1963), on the basis of merely having made available to me the relevant materials in the Ohio State Museum. In other words: it was either a co-authorship or no access to the Museum collections. At the time I was too much of a novice around here to realize that, being a public institution, it was my right to use the collections for legitimate scientific purposes. Baby contributed nothing, not one word, to the tome and would not have been capable of doing so, because he was totally ignorant of the problems involved. Apart from this I have other good reasons (as does [James B.] Griffin) to despise Baby for many of his deeds and misdeeds that blighted Ohio Archaeology after Morgan's departure and his, Baby's, utterly unwarranted accession [sic] to the curatorial throne."

In the event, much of what anyone knows inevitably relies on hearsay and personal impressions, both of which are inevitably prone to inaccuracy but which we must, again, sift through (almost archaeologically) in a search for truth. Yet my experience with the Franklin County Court of Common Pleas has left me with the sad conviction that the legal system in this instance was neither fair nor objective and the jurors were held captive both by their own limitations ("I have something important to do tomorrow.") and by the excessive "screening" of a judge who for whatever reason seemed intent upon protecting the defense's main witness.

As for donating or loaning artifacts to the Ohio Historical Society, I can only suggest that the Society carve above its portal a variant of Dante's injunction: Abandon all hope ye who enter *into an agreement* here.





Figure 1 (Murphy) Ray Baby and Martha Potter at 1970 mound excavation (probably Smith Mound, near Pickerington, Fairfield Co.)



Figure 2 (Murphy) Martha Potter and Dr. Stanley G. Cope Examining Schisler Village artifacts donated by the Archaeological Society of Ohio in 1962. The alleged Low "donation" would receive no such publicity. (Ohio Archaeologist photo)



Figure 3 (Murphy) Raymond S. Baby at the Riker Site. (R.S. Vietzen photo).



Figure 4 (Murphy) Martha Potter Otto receiving Best Field Find Award 1974. (Ohio Archaeologist photo).



Figure 3 (Murphy) Ray Baby holding the Low Tablet, 1971.